

HON. JOHN C. COUGHENOUR

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Wolfire Games, LLC, Sean Colvin, Susann Davis, Daniel Escobar, William Herbert, Ryan Lally, Hope Marchionda, Everett Stephens, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Valve Corporation,

Defendant.

Civil Action No. 2:21-cv-00563-JCC

DARK CATT STUDIOS HOLDINGS, INC., a Delaware corporation, and DARK CATT STUDIOS INTERACTIVE LLC, an Illinois limited liability company, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Valve Corporation,

Defendant.

Civil Action No. 2:21-cv-00872-JCC

**STIPULATED MOTION TO
CONSOLIDATE RELATED ACTIONS
UNDER LOCAL CIVIL RULE 42**

NOTE ON MOTION CALENDAR: July 22, 2022

Pursuant to Local Civil Rule (“LCR”) 42(a), Plaintiffs Wolfire Games, LLC, Dark Catt Studios Holdings, Inc., Dark Catt Studios Interactive LLC, William Herbert, Daniel Escobar, Sean Colvin, Everett Stephens, Ryan Lally, Susann Davis, and Hope Marchionda (collectively “Plaintiffs”) and Defendant Valve Corporation (collectively with Plaintiffs, the “Parties”)

1 respectfully submit this Stipulated Motion to Consolidate Related Actions and for Leave to File a
2 Consolidated Amended Complaint.

3 This Stipulated Motion seeks to consolidate two related actions currently pending in this
4 Court: *Wolfire Games et al. v. Valve Corporation*, Case No. 2:21-cv-00563-JCC (W.D. Wash.)
5 (“*Wolfire*”), and *Dark Catt Studios et al. v. Valve Corporation*, Case No. 2:21-cv-00872-JCC
6 (W.D. Wash.) (“*Dark Catt*”).

7 The *Wolfire* and *Dark Catt* actions involve claims asserted on behalf of overlapping
8 putative classes regarding allegedly anticompetitive conduct against the same Defendant.
9 Consolidating the cases under LCR 42 will promote efficiency and conserve judicial resources, as
10 well as the Parties’ resources.

11 IT IS THEREFORE STIPULATED AND AGREED, THROUGH COUNSEL OF
12 RECORD, THAT:

13 The Court should consolidate the *Dark Catt* action into the lower-numbered *Wolfire* action,
14 under the master caption *In re Valve Antitrust Litigation*; and

15 If the Court consolidates the *Wolfire* and *Dark Catt* cases, Plaintiffs will file a single
16 consolidated complaint in the consolidated action on behalf of game publishers by August 26,
17 2022.

18 Plaintiffs having further stated an intention not to add to any consolidated complaint any
19 substantively new allegations that were not previously included in either the *Wolfire* or *Dark Catt*
20 complaints, and recognizing that certain of the claims in the *Wolfire* complaint were dismissed
21 with prejudice, but seeking to preserve the appeal rights as to those allegations, IT IS
22 THEREFORE FURTHER STIPULATED AND AGREED THAT:

23 Pursuant to established law in this Circuit, Plaintiffs do not intend to include in any
24 consolidated complaint those claims dismissed with prejudice in the *Wolfire* action (*Wolfire* Dkt.
25 No. 80), but expressly state their intent to preserve their right to appeal the dismissal of those
26 claims.¹

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¹ See, e.g., *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (“For claims dismissed

DATED July 22, 2022.

/s/ Alicia Cobb

Alicia Cobb, WSBA #48685
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
1109 First Avenue, Suite 210
Seattle, Washington 98101
Phone (206) 905-7000
Fax (206) 905-7100
aliciacobb@quinnemanuel.com

Steig D. Olson (*pro hac vice*)
David LeRay (*pro hac vice*)
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
51 Madison Avenue
New York, New York 10010
Phone (212) 849-7231
Fax (212) 849-7100
steigolson@quinnemanuel.com

Adam Wolfson (*pro hac vice*)
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
865 S. Figueroa St., 10th Floor
Los Angeles, California 90017
Phone (213) 443-3285
Fax (213) 443-3100
adamwolfson@quinnemanuel.com

Charles Stevens (*pro hac vice*)
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
50 California St., 22nd Floor
San Francisco, CA 94111
Phone (415) 875-6600
Fax (415) 875-6700
charliestevens@quinnemanuel.com

David Golden (*pro hac vice*)
CONSTANTINE CANNON LLP
1001 Pennsylvania Ave., 22nd Floor
Washington, D.C. 20004
Phone (202) 204-4527
Fax (202) 204-3501
dgolden@constantinecannon.com

/s/ Stephanie L. Jensen

Stephanie L. Jensen, WSBA #42042
WILSON SONSINI GOODRICH &
ROSATI P.C.
701 Fifth Avenue, Suite 5100
Seattle, WA 98104-7036
Phone (206) 883-2500
Fax (206) 883-2699
sjensen@wsgr.com

Kenneth R. O'Rourke (*pro hac vice*)
Scott A. Sher (*pro hac vice*)
Allison B. Smith (*pro hac vice*)
WILSON SONSINI GOODRICH &
ROSATI, P.C.
1700 K Street, NW, Suite 500
Washington, DC 20006
Phone (202) 973-8800
Fax (202) 973-8899
korourke@wsgr.com
ssher@wsgr.com
allison.smith@wsgr.com

W. Joseph Bruckner (*pro hac vice*)
Joseph C. Bourne (*pro hac vice*)
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue S, Suite 2200
Minneapolis, MN 55401
Phone (612) 339-6900
Fax (612) 339-0981
wjbruckner@locklaw.com
jcbourne@locklaw.com

/s/ Gavin W. Skok

Gavin W. Skok, WSBA #29766
FOX ROTHSCHILD LLP
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154
Telephone: (206) 624-3600
Fax: (206) 389-1708
gskok@foxrothschild.com

Charles B. Casper (*pro hac vice*)

with prejudice and without leave to amend, we will not require that they be replied in a subsequent amended complaint to preserve them for appeal.”); *see also Vien-Phuong Thi Ho v. Reconstruct Co., NA*, 858 F.3d 568, 577 (9th Cir. 2017).

1 A. Owen Glist (*pro hac vice*)
Ankur Kapoor (*pro hac vice*)
2 Jeffrey I. Shinder (*pro hac vice*)
CONSTANTINE CANNON LLP
3 335 Madison Avenue, 9th Floor
New York, NY 10017
4 Phone (212) 350-2700
Fax (212) 350-2701
5 oglist@constantinecannon.com

MONTGOMERY McCracken Walker
& Rhoads LLP
1735 Market Street, 21st Floor
Philadelphia, PA 19103
Phone (215) 772-1500
ccasper@mmwr.com

Attorneys for Defendant Valve Corporation

6 *Proposed Interim Co-Lead Counsel*

7 Kenneth J. Rubin (*pro hac vice*)
8 Timothy B. McGranor (*pro hac vice*)
Kara M. Mundy (*pro hac vice*)
9 VORYS, SATER, SEYMOUR AND
PEASE LLP
10 52 East Gay Street
Columbus, Ohio 43215
11 Phone (614) 464-6400
Fax (614) 719-4796
12 kjrubin@vorys.com
tbmcgranor@vorys.com
13 kmmundy@vorys.com

14 Thomas N. McCormick (*pro hac vice*)
VORYS, SATER, SEYMOUR AND
15 PEASE LLP
4675 MacArthur Court, Suite 700
16 Newport Beach, California 92660
Phone (949) 526-7903 | Fax (949) 383-2384
17 tnmccormick@vorys.com

18 *Proposed Interim Executive Committee*
19 *Member*

1 It is so ORDERED this 22nd day of July 2022.

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5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2022, I caused a true and correct copy of the foregoing to be filed in this Court's CM/ECF system, which sent notification of such filing to counsel of record.

DATED July 22, 2022.

/s/ Alicia Cobb
Alicia Cobb, WSBA #48685